

Michelle T. Friend
HEDGER MOYERS LLP
1555 Campus Way, Suite 201
Billings MT 59102
(406) 896-4100
(406) 896-4199 facsimile

Attorney for BNSF Railway Company

FILED
BILLINGS DIV.
2006 AUG 28 PM 4 29
PATRICK E. DUFFY, CLERK
BY _____
DEPUTY CLERK

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
HELENA DIVISION**

LOUIS M. MELE

Charging Party,

vs.

**BNSF RAILWAY COMPANY, a Delaware
corporation,**

Respondent.

**Cause Nos. CV 06-36-H-CCL
CV-06-37-H-DWM**

**MOTION TO CONSOLIDATE AND
BRIEF IN SUPPORT**

MOTION

COMES NOW, The BNSF Railway Company ("BNSF"), and hereby moves to consolidate the causes of action, CV 06-37-H-DWM with CV 06-36-H-CCL pursuant to Rule 42 (a), M.R.Civ.P. Opposing counsel has been contacted and objects to this motion.

BRIEF

The history of these actions is that each party, Mele and BNSF filed separate petitions for judicial review in state court in Lewis & Clark County. BNSF then removed both actions to

federal court, which have the cause numbers CV 06-37-H-DWM and CV 06-36-H-CCL. The cases are regarding the same set of facts and the same hearing before the Human Rights Commission. Thus, as they are the same issues, they should be consolidated into one case. Rule 42 (a), F.R.Civ. P., provides:

When actions involving a common question of law or fact are pending before the court, it may order a joint hearing or trial of any or all of the matters in issue in the actions; it may order all the actions consolidated; and it may make such orders concerning proceedings therein as may tend to avoid unnecessary costs or delay.

The cases involve common questions of both fact and law. In the interests of judicial economy and consistency of the issues, BNSF requests that the Court grant its motion to consolidate CV 06-37-H-DWM with CV 06-36-H-CCL, the lower filed cause number.

DATED this 28th day of August, 2006.

HEDGER MOYERS LLP

By: 
Michelle T. Friend
Attorney for BNSF Railway Company

CERTIFICATE OF SERVICE

I hereby certify that I have served a true and correct copy of the foregoing upon the individual(s) listed below by the following means:

Brian Bramblett
Meloy & Trieweiler
PO Box 1241
Helena, MT 59624-1241

☒ U.S. Mail
☐ Facsimile
☐ Express Mail
☐ Hand Deliver

Marieke Beck
Dept. of Labor & Industry
Employee Relations Div./Human Rights Bureau
P.O. Box 1728
Helena, Montana 59624-1728

☒ U.S. Mail
☐ Facsimile
☐ Express Mail
☐ Hand Deliver

DATE: 08/28/06 BY: 